IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10262 of 1996
With
SPECIAL CIVIL APPLICATION No. 247 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKANT ATMARAM PATEL & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1 - 2, 2.2.1, 2.2.2, 2.2.3,2.2.4 - 3, 3.2.1, 3.2.2, 3.2.3, 3.2.4,3.2.5 - 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4,4.2.5
MR SATYAM CHAYYA, AGP for Respondent(s) : 1 - 2.
MR SB VAKIL with MS ARCHANA R ACHARYA for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 14/03/2007

COMMON ORAL JUDGMENT

1. As both the petitions are interconnected and the orders under challenge is common, they are being considered by this Court by this common Judgment.

2. The facts leading to the present petitions are that there were inter se disputes on the revenue entries and for which, the respective litigations are pending, which are not much relevant for the purpose of deciding the present petitions. It appears that the only question, which may arise for consideration in the present petitions are whether the Collector while exercising the power under the Bombay Land Revenue Code (hereinafter referred to as 'the Code') in the entry proceedings could pass the order for resumption of the land under Section 65 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as 'the Act')?

3. I have heard the learned advocate Mr. AJ Patel for the petitioner in Special Civil Application No. 10262 of 1996 and Mr. S.B. Vakil with Ms. Acharya for the petitioner in Special Civil Application No.247 of 1997 and Mr.Chhaya, learned AGP appearing for the State Authorities. It may be stated that the learned counsel for the petitioners who are joined as the respondents have appeared for their respective clients. However, the contention remains the same.

4. As such, it is not in dispute that in the proceedings of Revision Application No. 65/94 were not under Section 108(6) of the Gujarat Land Revenue Rules (hereinafter referred to as 'the Rules'), in which the District Collector had passed the impugned order dated 22.10.1996, whereby while disposing the revision application, the order is also passed for resumption of the land by the Government under the Act.

5. The perusal of the impugned order passed by the District Collector shows that the revision was preferred in connection with various RTS Entries and therefore, while deciding the legality and validity of the RTS entries, it was required for the District Collector to examine the aspects as to whether the entry could be mutated in the revenue record and at that stage, even it has come on record that the land was not cultivated for some time, he could not exercise the power under a different enactment, that too without initiating the action under the different enactment and without giving opportunity of hearing to the party concerned. The reference may be made to the decision of this Court in the case of Evergreen Apartment Coop. Housing Society Vs. Special Secretary, Revenue Department reported at 1991(1) GLR 113. It may also be recorded that thereafter, the said

decision in the case of Evergreen Apartment (Supra) was further considered by this Court in the case of Jayantilal Jethalal Soni Vs. State of Gujarat & Ors reported at 2005(4) GLR 3354 and it was observed by this Court that while exercising the power under the Land Revenue Code, in the matter of revenue entry, even if the authority finds that there is breach of the other enactment, at the most, while certifying the entry, there may be the prima facie observations and clarifications that the transaction is in breach of the said enactment and the entry shall continue, subject to the final outcome of the proceedings under the other enactment. However, the revenue authority while exercising the power under the Code, could not conclude the aspects of breach of other enactment.

6. If the facts of the present case are examined, it appears that the Collector, while exercising the revisional jurisdiction, has not properly recorded the reasons for maintaining the entry or for cancellation of the Entry which were subject matter of the revision before him and by stating the facts, he has mainly concentrated upon the breach of non-cultivation over the land consequently resulting into the breach of the provisions of Section 65 of the Act and the resumption of the land by the Government. The learned counsel appearing for the petitioners

are right in submitting that while exercising the revisional jurisdiction under the Code read with the other relevant Rules, the Collector has transgressed the jurisdiction under the Act, which is a different enactment.

7. Mr. Chhaya, learned AGP, is not in a position to support the order passed by the Collector under Section 65 of the Act, though it was not the subject matter of the revision. Hence, the only inevitable conclusion is that the District Collector while exercising the revisional jurisdiction has transgressed the jurisdiction by passing the order under Section 65 of the Act for resumption of the land.

8. Mr. Chhaya, learned AGP has submitted that even if this Court is to find that the Collector has exceeded in his jurisdiction, the liberty may be reserved for the Collector to make a reference to the appropriate authority in the for initiation of the proceedings under Section 65 of the Act. In my view, even as per the decision of this Court in the case of Jayantilal Jethalal Soni (Supra), the making of reference is not prohibited and therefore, no specific observation is required in this regard.

9. On the aspects of examination of the legality and validity of the entries, which were subject matter of the revision, as there are no proper reasons recorded by the Collector for either

confirming or cancelling of the entry, the matter will have to be remanded to the Collector for reconsideration of the revision in accordance with law.

10. In the result, the impugned order dated 22.10.1996 (Annexure-A) passed in both the petitions is quashed and set aside with the direction that the Revision No. 65 of 1994 shall stand restored to the file of the Collector and the District Collector shall decide the revision application after giving opportunity of hearing to all concerned, keeping in mind the observations made by this Court in the present Judgment, preferably within a period of 6 months from the receipt of the Judgment of this Court.

11. Petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly with no order as to costs.

(JAYANT PATEL, J.)

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